

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

VICTOR M. VILLALPANDO, #15397-078 §

VS. § CIVIL ACTION NO. 4:11cv735
CRIMINAL ACTION NO. 4:08cr214(1)

UNITED STATES OF AMERICA §

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Victor M. Villalpando, an inmate confined in the Eden Correctional Institution in Eden, Texas, filed “Petitioner’s Motion to a Federal Sentence Disparity.” After pleading guilty, he was sentenced to 51 months of imprisonment on October 27, 2009, for his conviction of Smuggling Goods from the United States and Aiding and Abetting, in violation of 18 U.S.C. § 554 and 2. In the present motion, Movant asks that his sentence be reduced from six months to one year due to his “Immigration consequences (deportation orders), and the disparity of the Federal sentence between a non-American citizen and an American citizen.” This case was docketed as a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. However, the appropriate method for requesting a sentence reduction is to file a motion in the underlying criminal case. Accordingly, this case should be dismissed as improvidently filed.

Recommendation

It is recommended that the above-styled case be dismissed without prejudice.

Within fourteen (14) days after receipt of the magistrate judge's report, any party may serve

and file written objections to the findings and recommendations contained in the report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

SIGNED this 12th day of January, 2012.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE